

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

MICHAEL D.,

Claimant,

vs.

SAN GABRIEL POMONA REGIONAL CENTER,

Service Agency.

OAH Nos. L2006040707

**DECISION**

Administrative Law Judge Deborah Myers, Office of Administrative Hearings, State of California, heard this matter in Pomona, California on June 19, 2006 and October 16, 2006.

Daniella Martinez and Ed Kutik, Representatives of San Gabriel Pomona Regional Center (Service Agency) appeared at the hearing and represented the Service Agency.

Lee D., father and authorized representative of the Claimant, appeared at the hearing and represented him.

Oral and documentary evidence was taken. Claimant's hearing brief was lodged, and is hereby marked for identification as Claimant's Exhibit 3. The matter was submitted and the record was closed on October 16, 2006.

**ISSUE PRESENTED**

Should the service agency be required to continue to fund Club Aspire for Claimant?

**FACTUAL FINDINGS**

1. Claimant Michael D. ("Michael ") is a 22 year-old man who receives services from the Service Agency based on his qualifying diagnosis of autism. Michael recently graduated from high school after receiving special education services from the Pasadena Unified School District. For approximately four and a half years, Michael has participated in a

social/recreation afternoon program, Club Aspire, funded by the Service Agency. Michael attended Club Aspire three times a week from 3:00 p.m. to 6:00 p.m. to assist with his social and recreational needs, among other needs. Club Aspire costs \$9.00 per hour, or about \$350.00 per month. Club Aspire activities emphasize full range of motion and large motor skills, including bowling, hiking, batting practice and golf. Club Aspire also provides grocery shopping training and cooking classes in a restaurant-sized full kitchen.

2. A social recreation program, such as Club Aspire, assists consumers in going out into the community and participating in social and recreational activities, community integration and training in self-advocacy. It is undisputed that participation in a community integration program is necessary to properly meet Michael's needs. Michael's Individual Program Plan (IPP) dated April 27, 2004,<sup>1</sup> identified his need for interacting with age-appropriate peers and for developing his social skills. This IPP identified Club Aspire as the appropriate vehicle for addressing Michael's inappropriate social behavior.

3. Michael's recent IPP dated February 26, 2006, identifies the goal of decreasing Michael's inappropriate social interaction and behavior. This IPP also identifies the goal of behavior management for Michael, who is verbally and physically aggressive when his routine is changed or when he transitions to a new activity. To address these behavioral issues, Michael receives up to 16 hours a year of behavior management therapy with T.O.T.A.L.<sup>2</sup> psychologist Sean Surfas. In May 2005, T.O.T.A.L. prepared a Psychoeducational Assessment for Michael. He tested at the moderate range of retardation in his cognitive and adaptive abilities. Michael tested at the four to seven year range of a typically developing child, with a few emerging skills in the seven to eleven year range in his overall cognitive skills, adaptive skills, practical skills, and academic skills. He placed in the first to second grade level in his math and reading skills. Michael's receptive language skills were strong, but he was difficult to understand, and his speech was unintelligible. His self help-skills were significantly below average. T.O.T.A.L. recommended a strong vocational program to complement his academic skills in developing new job skills.

4. In March 2006, after his completion of high school, Michael began attending Tierra Del Sol (Tierra), a vendored behavior management day program, five days a week from 8:00 a.m. to 2:00 p.m. After an evaluation period, Tierra identified Michael's self-stimulatory behavior and unsafe behavior as his most common target behaviors to be modified with replacement behavior. (This coincides with Michael's IPP goals of interacting with age-appropriate peers and safety awareness.)

4. Tierra has eight accredited programs and is paid by the Service Agency. Tierra develops individual programs for each client, based upon their needs and disabilities. One of Michael's targeted goals is to develop his job skills so he can work. Currently, Michael's inappropriate behavior and inappropriate social skills interfere with his ability to work. Tierra utilizes job coaches to train their clients to become working adults with supported employment.

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<sup>1</sup> Service Agency's Exhibit J.

<sup>2</sup> Treatment of the Autistic Learner

Clients are also trained to budget expenses, to shop responsibly and to maintain their own bank account. They are taught to use public transportation to be able to travel independently.

5. As part of his behavior management day program at Tierra, Michael participates in vocational training nine hours a week at various volunteer jobs, including working at a plant nursery, preparing meals for an AIDS project, and tending to horses, chickens, pigs and goats on a farm. Michael enjoys this work training, and his long range goal is to participate in an off-campus paid employment program.

6. In addition to working nine hours per week at Tierra, Michael may participate in some leisure outings and some physical activity at the program such as Music and Movement, computer lab, Special Olympics practice, swimming, and table top activities. Michael's participation in these leisure activities is often limited by his autistic condition.

7. The Service Agency contends that the Club Aspire social/recreational activities duplicate the Tierra del Sol social/recreational activities, and that the funding for Club Aspire should discontinue. The Service Agency now seeks to terminate its funding of social/recreational services for Michael and wants him to use his In Home Support Service (IHSS)<sup>3</sup> and Social Security benefits instead. The Service Agency does not dispute Michael needs these services nor does the Service Agency contest the reasonableness of the level of services he is receiving. However, the Service Agency contends it should no longer fund these services under its purchase of service standards policy.

8. The Service Agency's Purchase of Service Policy states:

The potential secondary social and recreational value of each activity or service specified in the individual program plan shall also be considered in planning and purchasing any service.

...

[S]ocial recreation services may only be purchased for clients whose day services do not provide social recreation opportunities.<sup>4</sup>

9. The combination of Tierra's day program and Club Aspire's afternoon program provides Michael with approximately 39 hours of weekly structured activities, behavior modification, job coaching, and social recreation opportunities. At the time Michael began attending Club Aspire, he was attending high school and needed additional services. At the time Michael began attending Tierra's day program, he had just completed high school. Tierra's program essentially replaced Michael's 30-hour weekly educational structure from high school with a 30-hour weekly behavioral management structure. Michael, an individual with autism, has severe developmental delays in the areas of motor and communication abilities, and

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<sup>3</sup> A County of Los Angeles program.

<sup>4</sup> Service Agency's Exhibits A and I.

requires an appropriately structured environment. He benefits from the combination these highly structured 39-hour weekly programs, just as he benefited from the combination of the highly structured 39-hour weekly program provided by his high school and Club Aspire.

10. There was no evidence that Michael has met his IPP goals and no longer requires social recreation and behavior management. There was no evidence of a change in circumstance in Michael's needs.

## LEGAL CONCLUSIONS

1. Under the Lanterman Act (Welf. & Inst. Code § 4500 et seq.), the State of California accepts responsibility for persons with developmental disabilities and provides treatment and habilitation services and supports. (Welf. & Inst. Code, § 4501.) The state agency charged with implementing the Lanterman Act is the Department of Developmental Services (hereinafter referred to as "DDS"). The Lanterman Act authorizes DDS to contract with regional centers to provide developmentally disabled individuals with the necessary access to the services and supports they need. (Welf. & Inst. Code, § 4620.) The services and supports provided by the regional center must be based upon the client's developmental needs and should reflect the client's wishes and preferences. (Welf. & Inst. Code, §§ 4646, 4646.5, subd. (a)(1), (2) and (4), 4512, subd. (b), and 4648, subd. (a)(6)(E).)

2. When deciding what services to provide a consumer, the service agency has a duty to provide services that meet the consumer's needs and preferences that are also a cost-effective use of public resources. (Welf. & Inst. Code §§ 4640.7, subd. (b), 4646, subd. (a).) The service agency must also follow the intent of the Legislature as stated in Welfare and Institutions Code, section 4646, subdivision (a), to provide services that take into account the needs and preferences of the consumer. The service agency is required to secure needed services and supports that will be effective in meeting the goals stated in the consumer's individual program plan. (Welf. & Inst. Code §§ 4646, subd. (a) and 4648, subd. (a)(1).) The regional center is required to "find innovative and economical methods of achieving the objectives" of the client's individual program plan ("IPP") (Welf. & Inst. Code § 4651).

3. California Code of Regulations, title 17, section 54302, subdivision (a)(64), defines "social recreation program" as a community-based day program that provides the client with community integration and training in self-advocacy as they relate to recreation and leisure pursuits.

4. Welfare and Institutions Code section 4659, subdivision (a), provides that when a service agency makes decisions regarding purchase of service requests for consumers, the service agency is mandated to "identify and pursue all possible sources of funding for consumers receiving regional center services." The service agency is mandated to consider all possible generic sources for funding the claimant's needed services. (Welf. & Inst. Code § 4648, subd. (a)(8).) The service agency maintains that IHSS and social security benefits are a generic source that can be used to pay for social/recreational services. However, if a needed service is not provided by the generic agency, then the regional center must fill the gap and fund

the service in order to adequately meet the goals set forth in the claimant's IPP. (Welf. & Inst. Code, § 4648, subd. (a)(1); *Association for Retarded Citizens v. Department of Developmental Services*, (1985) 38 Cal. 3d 384, 390.)

5. The evidence established that Michael benefits from both his behavior management program, Tierra del Sol, and his social recreation program, Club Aspire. The evidence established that Michael currently receives 39 hours per week of structured programs in the form of Tierra's behavior management program and Club Aspire's social recreation program, just as he received 39 hours per week of structured programs when he attended high school and Club Aspire. The evidence established that Michael is often limited in his ability to participate in social recreation programs due to his autistic condition.

6. The Service Agency failed to meet its burden of proof required to discontinue the social recreation program at Club Aspire, which it has funded for over four years. The Service Agency did not establish Michael has already met his IPP goals or that there was a change of circumstance. Club Aspire and Tierra offer distinct activities and address different IPP goals. He is stable and thriving in both programs. The possible duplication of social/recreational activities in these two distinct programs is not sufficiently compelling to justify reducing the number of hours Michael participates in these appropriately structured programs. The primary focus of Tierra is to address Michael's behavioral needs and job training needs. The importance of maintaining his current level of appropriately structured activities outweighs any slight duplication of services in the two programs.

7. The Service Agency's purchase of Service Standards Policy does not appropriately take into account Michael's individual needs identified in his IPP, as required by the Lanterman Act. The Service Agency cannot rely on its standards to delete funding of a social recreation program without considering Michael's needs and preferences, which currently includes 39 hours per week of structured behavior management, job training, and social recreation. Michael has established a sufficient need and preference to justify his continued participation in Club Aspire.

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## ORDER

The Claimant's appeal of Service Agency's decision to terminate the funding of social/recreational services at Club Aspire is hereby sustained.

DATED: November 1, 2006

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DEBORAH MYERS  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days of receipt of notice of this decision.